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No. _____

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In The Supreme Court Of The United States

OCTOBER TERM, 1997

LLOYD LENWOOD WALKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The following question is presented by the Petition for Writ of Certiorari:

1. Whether Walker's Fourth, Fifth and Sixth Amendment rights were violated by Walker being seized and placed in custody without probable cause, and whether any and all statements which were obtained from him thereafter, without benefit of his Miranda warning, were the result of police interrogation or its equivalent, and were, therefore, unconstitutional?

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PETITION FOR WRIT OF CERTIORARI

Lloyd Lenwood Walker respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case, reproduced in the Appendix at Page 22 herein.

OPINIONS BELOW

On September 29, 1995, Walker moved the district court to suppress certain evidence obtained in violation of Miranda. After a suppression hearing on October 5, 1995, the trial court found that Walker was the subject of custodial interrogation in violation of Miranda but determined that Walker volunteered information of officers which was not directly related to the Miranda violation. The opinion of the United States District Court for the Western District of Virginia at Lynchburg, Case Number 95-CR-70084-1, is unreported and reproduced in the

Appendix. Subsequent to his conviction, Walker appealed this ruling to the United States Court of Appeals for the Fourth Circuit, but his claims were rejected and his convictions were affirmed in an unpublished decision, United States of America v. Lloyd Lenwood Walker , Case No. 96-4169, reproduced in the Appendix, herein, at page 32. No rehearing was requested.

JURISDICTION OF THIS COURT

The jurisdiction of this Court is invoked under Article 3, Section 2 of the Constitution of the United States and under 28 U.S.C. §1254(1).

The judgment of the United States District Court, Western District of Virginia was entered February 14, 1996, and a timely petition for appeal to the United States Court of Appeals for the Fourth Circuit was denied August 14, 1997.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V.

No person …shall be compelled in any criminal case to be a witness against himself….

AMENDMENT VI.

In all criminal prosecutions, the accused shall…have the Assistance of Counsel for his defense.

21 U.S.C.§841(a)(1)

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally -

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute or dispense, a controlled substance…

STATEMENT OF THE CASE

A. THE PARTIES

Petitioner is Lloyd Lenwood Walker (Walker).

Respondent is the United States of America.

B. THE ACTION BELOW

1. The Indictment

Walker was the subject of a three-count indictment filed against him on July 20, 1995, by a Grand Jury for the Western District of Virginia, charging him with unlawful possession of cocaine with intent to distribute in violation of 21 U.S.C. §841(a)(1); for possession of a firearm in violation of 18 U.S.C. §924 (c). Count 3 was dismissed on the government's motion, forfeiture having already taken place in state court.

2. The Trial

On September 29, 1995, Walker moved to suppress certain evidence obtained from him in violation of *Miranda*. His motion was heard just prior to the trial proceedings on October 5, 1995.

The Court suppressed some, but not all, of Walker's statements elicited in response to interrogation, finding that some of Walker's statements were voluntary and that some of the evidence seized was the product of inevitable discovery. Thereafter, Walker waived his right to a jury trial and was found guilty of two counts of the indictment filed against him: unlawful possession with the intent to distribute cocaine in violation of 21 U.S.C. §841(a)(1), and possession of a firearm in violation of 18 U.S.C. §924 (c). The district court subsequently vacated Walker's §924 (c) conviction in light of Bailey v. United States, ___U.S.____, 64 U.S.L.W. 4039 (U.S. Dec. 6, 1995) (Nos. 94-7448/7492).

3. Walker's Appeal

Walker timely noted his appeal to the United States Court of Appeals for the Fourth Circuit. In an unpublished opinion, the Court of Appeals

reviewed the district court's legal conclusion regarding the motion to suppress *de novo*. The Court of Appeals found that the district court did not err in admitting certain of Walker's statements to the officers regarding ownership of cocaine because such statements were deemed voluntary. The Court of Appeals further found that even if the district court erred in admitting such statements that the error was harmless and affirmed his conviction. Walker did not request rehearing.

STATEMENT OF FACTS

Walker had been the subject of an ongoing investigation by the Lynchburg Police Department prior to April 26, 1995. Despite this six-month investigation, there were no outstanding warrants against Walker.

On April 26, 1995, at about 10:30 p.m., Investigator Dance of the Lynchburg Police

Department received information from a confidential, reliable informant that there was a substantial amount of cocaine inside Lloyd Lenwood Walker's residence at 601 Victoria Avenue. The informant was alleged to have been to Walker's residence to make a controlled purchase of crack cocaine. The informant told Dance that Walker was preparing to leave the residence to make a delivery of crack cocaine. On previous occasions, the informant had seen Walker with a weapon in his belt, so Dance assumed that Walker might be armed on this occasion.

Investigator Dance then met with Officer G. Wayne Cyrus of the Lynchburg Police Department at the end of Ninth Street, Lynchburg, Virginia, at about 10:45 p.m. Based on the information that Dance related to Cyrus, Cyrus told Dance to prepare an affidavit for a search warrant of the residence. Cyrus instructed Investigator Thomas to go to

Walker's residence and begin surveillance to determine what persons were arriving and leaving. Cyrus was in the process of requesting a tactical team to assist entry to the residence as soon as the warrant was obtained when he received information from Officer Thomas that Walker had just left the residence with another individual in a gray Isuzu with a specific tag number.

Despite the content of their information, the police did not seek to have an arrest warrant issued for Walker, nor a search warrant for his vehicle,. Instead, Cyrus commanded Thomas to follow Walker's vehicle and request assistance from uniformed officers to stop the vehicle. Meanwhile, surveillance of Walker's residence was discontinued. Thomas followed Walker's vehicle to the lot of a 7-11 store on Bedford Avenue in Lynchburg, Virginia, where someone exited the vehicle and went into the store. When this

individual exited the store and returned to the vehicle, Walker prepared to drive off the parking lot.

Though Walker had not committed any traffic violations, he was stopped based on the police information from the informant that Walker was going to make a drug delivery and that he was in possession of a firearm. As grounds for their stop of Walker's vehicle, the police alleged that they wanted to avoid a gun battle if Walker returned to the house while the search warrant was being executed.

Walker's vehicle was stopped as he attempted to leave the parking lot. More than ten policemen from five to six vehicles rushed the Walker vehicle. Walker's vehicle was blocked from leaving the parking lot. The officers had their guns drawn and told Walker and his companion to park the vehicle. One of the officers opened the

driver's side door, grabbed Walker's arm and ordered him from the vehicle.

Walker was placed in handcuffs and was told by Officer Cyrus that he was NOT under arrest, just the subject of an investigative detention. Walker was placed in a detective's car while his vehicle was searched. Walker estimated that he was detained in the parking lot for about forty-five minutes, during which time he was never advised of his rights nor charged with any offense, nor was he served with any papers.

A cursory search was made of the vehicle, and a drug dog was summoned to check the vehicle. The dog alerted officers to the console area of the vehicle, after which the vehicle was transported to the police department for a more thorough search. The stop and search of Walker's vehicle failed to reveal that Walker was in possession of any drugs or weapons, nor did it reveal that Walker was in the

process of making a drug delivery.

At about 11:54 p.m., during Walker's detention in the 7-11 store parking lot, Officer Dance had gone to the magistrate's office to obtain the search warrant for Walker's residence. Once the warrant had been issued at about 12:14 a.m. on April 27, 1996, Cyrus told Walker about the warrant and transported Walker, still handcuffed, in a police vehicle to the residence. When they arrived at the residence, Walker, still handcuffed, was removed from the vehicle and taken inside. Officer Dance was already executing the search and had presented the search warrant to Walker's girlfriend, Ms. Knock, who was present at the residence with a small child. Walker was taken to the kitchen area of the home. Walker still was NOT advised of his rights. Walker was asked if the cocaine was in the bottom drawer of a locked chest upstairs. At first Walker was noncommittal, then said "yeah", and

then said, "The stuff is mine. The girl has nothing to do with it."

Officer Dance, conducting the search of the residence, started in the back upstairs room which contained fitness equipment and a chest of drawers. He focused on the bottom drawer of the chest which had a lock on the side. Dance began prying at the bottom drawer when he was told that there may be a key to it on the key ring that was seized when Walker's vehicle was transported to the police station. Dance suspended his search of the chest until the key could be delivered. After Dance unlocked the chest of drawers, he found drug paraphernalia, cash and drugs. Walker was not present in the room.

Subsequently, Walker was taken to an upstairs front bedroom where Dance engaged in a conversation with him in the presence of Investigator Thomas and a uniformed officer.

Dance asked Walker where his weapon was. At first Walker told him it was downstairs; then Walker told him that the weapon was behind the television set. Dance recovered the weapon and began to try to disable it. Walker told him that the weapon was registered to him. Dance claimed that when Walker made the statements about the ownership of the gun and the ownership of the cocaine that Dance was no longer speaking to Walker because a lapse of 20-30 seconds occurred between Dance's direct question to Walker about these things and Walker's responses.

The search warrant for the house was never given to Walker, nor was Walker advised of his rights until after he was taken to the police station upon the completion of the search of his residence. At the police station, Walker was asked to read his Miranda rights in front of Dance. When Walker then was asked to make a statement, Walker invoked his right to an attorney.

REASONS FOR GRANTING CERTIORARI:

WALKER'S FOURTH, FIFITH AND SIXTH AMENDMENT RIGHTS WERE VIOLATED BY HIS BEING SEIZED AND PLACED IN CUSTODY ON BEDFORD AVENUE WITHOUT PROBABLE CAUSE, AND ANY AND ALL STATEMENTS WHICH WERE OBTAINED FROM WALKER THEREAFTER, WITHOUT BENEFIT OF HIS *MIRANDA* WARNING WERE THE RESULT OF POLICE INTERROGATION OR ITS EQUIVALENT, AND WERE, THEREFORE, UNCONSITUTIONAL.

The United States Court of Appeals for the Fourth Circuit has entered a decision in this case which conflicts with relevant decisions of this Court in such a manner which calls for an exercise of this Court's supervisory power.

The government conceded that at the time Walker was questioned by police at his residence that Walker was effectively under arrest. Likewise,

the district court found that the questions asked of Walker at his residence constituted custodial interrogation, but made inquiry, nevertheless, as to whether any of Walker's statements were spontaneous. The district court found that Walker had made four inculpatory statements regarding the location of the gun; the location of the cocaine; the registration of the gun, and the ownership of the cocaine. The district court found that the statements Walker made about the location of the gun and the cocaine were the product of custodial interrogation without the benefit of *Miranda*. Even though the district court found that the statements Walker made regarding the registration of the gun and ownership of the cocaine were made in contravention of *Miranda* "in the sense that" Walker was in custody

and *Miranda* had been violated, the district court found that these statements were volunteered.

The Court of Appeals for the Fourth Circuit agreed with the trial court, stating that "A statement that is unsolicited or unresponsive to an earlier question is deemed voluntary and, therefore, admissible." The Court of Appeals found that Walker's statement regarding ownership of the drugs was volunteered because Officer Dance had already asked the question concerning the location of the drugs and had turned away from Walker without asking any more questions. Though 20-30 seconds lapsed between the time Walker made his statement and the time of the initial question, his response was directly related to Dance's question; however, the Court of Appeals stated that even if

the admission of Walker's statement was in error, it was harmless. (Appendix Pages 29-30).

Walker avers that the evidence given by Officer Dance concerning the allegedly volunteered statements does not support the unwarranted determination that his statements were spontaneous or that without them the government had sufficient evidence to sustain his conviction. Dance testified that when he asked Walker where the weapon was, Walker's first reply was that

> "it was downstairs. We started to leave the room and then he said 'Wait a minute' and then he started backing towards the television set, and I said 'Hold on a second' and went over and asked him to come over next to Investigator Thomas and I said is the weapon behind the TV'...I went behind the TV and recovered the weapon....At that time I was trying to disable the weapon, take the clip out of it, see if there was any rounds in the chamber. As id did so, I was talking to another investigator and he (Mr. Walker) made a statement....He made the statement that the pistol was registered to him."

Before Dance found the cocaine in the upstairs weight room, he questioned Walker in the kitchen of the residence. He asked Walker if the cocaine was in the bottom drawer upstairs safe, and Walker,

> "at first...hemmed and hawed and then he shook his head and said 'yeah'...I turned and notified somebody that we needed to go, that it was in the bottom drawer and at that time he (Walker) made the statement...'The stuff is mine; the girl has nothing to do with it.'"

Dance admitted that both statements were on the same subject as the questions he posed to Walker, but claimed that Walker made both of these statements after Dance had turned away from him and that twenty to thirty seconds had elapsed.

This account of how Walker came to claim ownership of the gun and the cocaine was directly related to Walker's responses to Officer Dance's questions concerning the location of the gun and the location of the cocaine.

The Supreme Court of the United States has ruled that once a process becomes accusatory, a suspect must be advised of his Miranda rights. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed. 2d 694 (1966). It is only after all the required warnings are given, and unless and until a waiver is demonstrated, that evidence thereafter obtained can be used against a defendant. Escobedo v. Illinois, 378 U.S. 478, 84 S. Ct. 1758, 12 L. Ed. 2d 977 (1964); U.S. v. Pittman, 527 F. 2d 444 (4th Cir. 1975), cert. denied, 424 U.S. 923, 96 S. Ct. 1132, 47 L.Ed.2d 331 (1976).

Miranda is a per se rule, and an inquiry as to whether or not a statement should be suppressed is not a matter of whether the statement is voluntary but rather is whether the warnings were given. If the warnings are not given, statements made in response to custodial interrogation are inadmissible, and it does not matter whether they were voluntary. U.S. v. Renda, 567 F. Supp. 487 (E. D. Va. 1983).

n U.S. v. Henley, 984 F. 2d 1040 (9th Cir. 1993), the court found that Henley was effectively under arrest, without benefit of Miranda warnings, at the time he made an incriminating statement regarding ownership of a vehicle used in a robbery. The court ruled that even though the district court deemed Henley's admission voluntary, such finding of voluntariness did not alter the fact that Henley's admission of ownership should have been suppressed. The court stated that Miranda, supra, at 474, "presumes conclusively that all responses to custodial interrogation are involuntary, unless preceded by the prescribed warnings." Unless the admission of such evidence is harmless beyond a reasonable doubt, a conviction should be reversed. Henley, supra, at 1045, citing United States v. Disla, 805 F. 2d 1340 at 1347 (9th Cir. 1986).

The types of cases in which the courts have allowed the admission of voluntary/spontaneous statements are 1) cases in which statements were made during an

investigatory Terry stop **before** the defendant was arrested where such statements were not in response to police questioning or its functional equivalent. U.S. v. McGauley, 786 F. 2d 888 at 891 (8th Cir. 1986), and 2) cases in which the defendant volunteered incriminating statements, post-arrest *Miranda* warnings, to processing questions which were not asked or designed to elicit an inculpatory response. U.S. v. Webster, 769 F. 2d 487, 491 (8th Cir. 1985).

Walker maintains that the record shows that all of the statements he made to Officer Dance were in response to questions initiated by Officer Dance. Because Walker was in custody at the time, his statements stemmed from custodial interrogation in violation of the procedural safeguards of *Miranda*. Dance testified that he asked Walker questions prior to Walker giving responses to those questions. It is only when a defendant makes a statement prior to any action by a police officer and before an accusation, arrest or any custodial interrogation that his

statements can be deemed spontaneous. Stevenson v. Boles, 331 F. 2d 939 (4th Cir.) modified, 379 U.S. 43, 85 S. Ct. 174, 13 L.Ed. 2d 109 (1964), aff'g 221 F. Supp. 411 (N.D.W. Va. 1963).

Because Walker was effectively under arrest at the time his statements were made, but had not been told he was under arrest, had not been given *Miranda* warnings and was the subject of custodial interrogation, none of his statements can be said to be voluntary or spontaneous. *Miranda* attached when Walker was taken into custody and significantly restrained by handcuffs. The police had a duty to inform him of his constitutional rights, even though Walker was questioned in his house. At the time Walker was taken into custody and subjected to questioning, his right against self-incrimination was compromised. The requirement of *Miranda* is that an accused be fully apprised of his right to remain silent, the consequences of any statement he makes, and of his right to counsel. This requirement was formulated to prevent police from eliciting

evidence of a testimonial character from an accused without adequate safeguards so that the accused can be both fully aware of his right not to supply evidence and be given a means to protect his rights.

Under the facts of the case, all of Walker's statements to Officer Dance should have been suppressed as being in violation of *Miranda*. A claim that a response, which is not instantly made in response to a question, is a spontaneous statement is a dangerous departure from established constitutional safeguards, leaving one to wonder what remains of the *Miranda* rule. A lapse of twenty to thirty seconds between a question and a response cannot be said to make the response spontaneous where the response is related to the question asked. Are we now in a position where we must announce a time limit standard to allow a defendant to exercise *Miranda* rights? Such reasoning calls to mind images of television game shows where responses must be made before the buzzer rings. None of Walker's statements in response to police

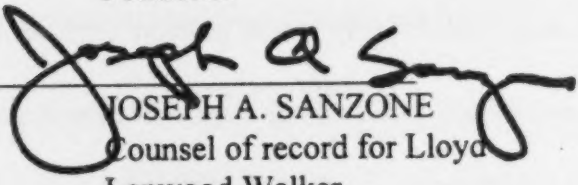
questioning were admissible and their admission cannot be shown to be harmless error beyond a reasonable doubt.

CONCLUSION

All of Walker's statements elicited in response to police interrogation without benefit of *Miranda* and while he was effectively under arrest should have been suppressed. This Court should grant certiorari and reverse the admission of Walker's so-called spontaneous statements into evidence and remand this case for retrial without the admission of said statements.

Respectfully submitted,

LLOYD LENWOOD WALKER,
Petitioner

By 

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UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v. No. 96-4169

LLOYD LENWOOD WALKER,
Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Virginia, at Lynchburg.
Samuel G. Wilson, Chief District Judge.
(CR-95-84)

Submitted: February 11, 1997

Decided: August 14, 1997

Before HALL and NIEMEYER, Circuit Judges, and
BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

Joseph Abraham Sanzone, JOSEPH A. SANZONE ASSOCIATES, Lynchburg, Virginia, for Appellant. Robert P. Crouch, Jr., United States Attorney, Thomas L. Eckert, Assistant United States Attorney, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Lloyd L. Walker appeals from his conviction of distribution of crack cocaine, 21 U.S.C. 841(a)(1) (1994), for which he received a 151-month prison sentence. Walker claims, first, that his unwarned statements to the police were the result of a custodial interrogation in violation of *Miranda v. Arizona,* 384 U.S. 436 (1966), and, therefore, should have been suppressed. Walker also claims that the 100-to-1 sentencing ratio for crack cocaine as compared to cocaine powder adversely affects blacks in violation of due process and equal protection. We affirm.

On April 26, 1995, Officer William Dance of the Lynchburg, Virginia, police department directed a

controlled purchase of crack cocaine from Walker at his residence in Lynchburg. After the informant returned from purchasing the cocaine, Dance applied for a search warrant for Walker's residence while Officer Thomas was directed to proceed to Walker's house and keep him under surveillance until officers arrived with the search warrant. When Thomas observed Walker leaving his residence with another person, Thomas was ordered to follow Walker and to stop his car when he was joined by a backup unit. Walker was intercepted in the parking lot of a convenience store. The passenger, upon seeing the police approaching, opened the door and dropped a small bag of cocaine on the ground.

The officers searched Walker's car in the parking lot but found no weapons or drugs. Walker's car was taken for an

inventory search and Walker, handcuffed, was taken by Commander Cyrus back to his residence. Dance had arrived a few moments earlier with a search warrant.

Once inside the residence, Dance asked Walker, "The cocaine is in the bottom drawer upstairs in the safe, isn't it?"to which Walker responded, "Yes." After other agents went upstairs to find the cocaine, Walker turned to Dance and said that the cocaine belonged to him and that his girlfriend (who was at the residence at the time the search was taking place) "had nothing to do with it." According to Dance, Walker made this statement approximately 20 to 30 seconds after Dance had asked him about the location of the cocaine. Dance and the other officers eventually retrieved the cocaine from a locked chest of drawers in an upstairs bedroom, using a key found on a key ring in Walker's car.

Dance then asked Walker "where the weapon was." Walker first said it was "downstairs" and then told Dance that it was behind a television in the room in which they were standing. Dance retrieved the gun and removed the clip. As Dance was speaking to another officer, Walker said that the firearm was registered in his name. It is undisputed that, up to this point, no one had read Walker his *Miranda* rights.

Walker filed a motion to suppress his statements made to Dance about the location of the cocaine and the weapon and to suppress the key seized from his car. After a hearing on the motion, the district court granted the motion to suppress the unwarned statements concerning the locations of the gun and the cocaine. The court also suppressed the key because it was not relevant evidence.

However, the district court denied the motion with respect to Walker's statement that the gun was registered to him and other statements that were not in response to questions, on the grounds that they were volunteered and, therefore, not fruit of the *Miranda* violation.

Walker elected to be tried by the court and was found guilty of (1)distribution of crack cocaine and (2) using or carrying a firearm during and in relation to a drug trafficking crime, 18 U.S.C. 924(c) (1994). However, the district court subsequently vacated Walker's 924(c) conviction in light of *Bailey v. United States*, _ U.S.__, 64 U.S.L.W. 4039 (U.S. Dec. 6,1995) (Nos. 94-7449/7492).

Walker noted a timely appeal.

The district court's legal conclusion regarding the motion to suppress is reviewed de novo, and its findings of fact are reviewed for clear error. *United States v.* Han 74 F.3d 537, 540 (4th Cir.), *cert. denied,* __ U.S.__, 63 U.S.L.W. 3807 (U.S. June 3,1996) (No. 958891); *United States v. Williams,* 10 F.3d 1070,1077 (4th Cir. 1993). Walker's statement regarding ownership of the cocaine was properly admitted by the district court. It is well settled that spontaneous or volunteered statements are not barred under *Miranda.* "Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today." *Miranda v. Arizona,* 384 U.S. at 478. A statement that is unsolicited or unresponsive to an earlier question is deemed voluntary

and, therefore, admissible. *See, e.g., United States v. Wright,* 991 F.2d 1182, 1186-87 (4th Cir. 1993); *United States v. Cordova,* 990 F.2d 1035, 1037-38 (8th Cir. 1993); *Anderson v. Thieret,* 903 F.2d 526, 532 (7th Cir. 1990) (lapse of time and nonresponsive nature of defendant's statement "removes any possibility that [defendant] was responding to police interrogation"); *United States v. Suggs,* 755 F.2d 1538, 1542 (11th Cir. 1985) (voluntary comments unresponsive to police questioning are admissible even after *Miranda* rights are asserted).

Walker's statement regarding ownership of the drugs was volunteered - Dance had already asked the question concerning the location of the drugs and had turned away from Walker without asking any more questions. In any event, any error in the admission of this

statement was harmless because the other evidence presented by the government was sufficient to convict him. *See United States v. Mobley*, 40 F.3d 688, 694 (4th Cir. 1994) (statement obtained in violation of *Miranda* was harmless error where other evidence at trial clearly established guilt), *cert. denied*, __ U.S. __ , 63 U.S.L.W. 3832 (U.S. May 22, 1995) (No. 94-8158); *United States v. Khan*, 993 F.2d 1368, 1376 (9th Cir. 1993) (same).

This court has held that the higher guideline range applicable to crack cocaine, as compared to powder cocaine, does not violate equal protection or the due process clause. *United States v. Fisher*, 58 F.3d 96, 98-100 (4th Cir.), *cert. denied*, __ U.S.__, 64 U.S.L.W. 3270 (U.S. Oct. 10, 1995) (No. 95-5923). *See also United States v. Jackson*, 84 F.3d 1154 (9th Cir. 1996), *cert. denied*, _ U.S.

_, 65 U.S.L.W. 3353 (U.S. Nov. 12. 1996) (No. 96-6320); *United States v. Steen*, 55 F.3d 1022, 1029 n. 15 (5th Cir. 1995), *cert. denied*, _ U.S.__, 64 U.S.L.W. 3397 (U.S. Dec. 4, 1995) (No. 95-6564); *United States v. Shorter*, 54 F.3d 1248, 1253 n.11 (7th Cir. 1995), *cert. denied*, _ U.S. _, 64 U.S.L.W. 3247 (U.S. Oct. 2, 1995) (No. 955456). Moreover, Congress has recently rejected the Sentencing Commission's recommendation to lower the ratio between crack cocaine and powder cocaine. *See United State v. Hayden*, 85 F.3d 153, 157-58 (4th Cir. 1996).

Accordingly, we affirm Walker's conviction and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

AO245B (Rev. 3/95) Sheet 1 Judgment in a Criminal Case

UNITED STATES DISTRICT COURT

Western District of Virginia

Judgment in a Criminal Case

(For Offenses Committed on or After

November 1, 1987)

Case Number: **6:95CR70084-001**

ENTERED: *February 14, 1996*

Joseph A. Sanzone, Esq.
Defendant's Attorney

UNITED STATES OF AMERICA

v.

LLOYD LENWOOD WALKER

THE DEFENDANT:

__pleaded guilty to count(s)

__pleaded nolo contenders to count(s)

which was accepted by the court.

X was found guilty on count(s) **One (1)**

after a plea of not guilty.

Title & Section: **21 U.S.C. 841(a)(1)**

Nature of Offense: Distribution of crack cocaine

Date Offense Concluded: **4/27/1995**

Count Number(s): **One**

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

__The defendant has been found not guilty on count(s)

X Count(s) **two** is dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or

mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

I)efendant's Soc. Sec. No.: **228-39-1937**

Date of Imposition of Judgment: **02/13/1996**

Defendant's Date of Birth: **11/30/1970**

Defendant's USM No.: **05654-084**

Defendant's Residence Address:

Roanoke City Jail
Roanoke, VA

Defendant's Mailing Address:

Roanoke City Jail
Roanoke, VA

(Samuel G. Wilson)
Signature of Judicial Officer

Honorable Samuel G. Wilson
United States District Judge
Name & Title of Judicial Officer

2/14//1996
A TRUE COPY, TESTE:
MORGAN E. SCOTT, JR., CLERK

By: *(P. Nelms,* Deputy Clerk)

AO245B (Rev. 3/95) 2 - Imprisonment
Judgment Page 2 of 6
DEFENDANT: **LLOYD LENWOOD WALKER**

CASE NUMBER: **6:95CR70084-001**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of

151 months.

The court makes the following recommendations to the Bureau of Prisons:

X The defendant is remanded to the custody of the United States Marshal.

__The defendant shall surrender to the United States Marshal for this district:

__ at___a.m./p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

____before 2 p.m. on_____

____as notified by the United States Marshal.

_____as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

Defendant delivered on _____

to _____at_____,

with a certified copy of this judgment.

_____

UNITED STATES MARSHAL

By_____

DeputyU.S.Marshal

AO 245B (Rev. 3/95) Sheet 3 - Supervised Release
Judgment Page 3 of 6

DEFENDANT: **LLOYD LENWOOD WALKER**

CASE NUMBER: 6:95CR70084-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years(s).

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.
The defendant shall not illegally possess a controlled substance.

For *offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

__The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

X The defendant shall not possess a firearm as defined in 18 U.S.C. 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below) . The defendant shall also comply with the additional conditions on the attached page (if indicated below).

See Special Conditions of Supervision - Sheet 3.01

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such_____

AO 245B (Rev. 3/95) Sheet 3 -

Supervised Release

DEFENDANT: **LLOYD LENWOOD WALKER**

CASE NUMBER: **6:95CR70084-001**

SPECIAL CONDITIONS OF SUPERVISION

1. Defendant shall participate in a program of testing and treatment for substance abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

2. Defendant shall not possess a firearm or destructive device and shall reside in a residence free of firearms and destructive devices.

3. Defendant shall submit to warrantless search and seizure of person and property as directed by the probation officer.

Judgment-Sheet 3.01

AO 245B (Rev. 3/95) Sheet 5, Part A - Criminal Monetary Penalties
Judgment-Page 4 of 6

DEFENDANT: **LLOYD LENWOOD WALKER**

CASE NUMBER: **6:95CR70084-001**

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

Totals:

Assessment:	**$**	**50.00**
Fine:	**$**	
Restitution:	**$**	

___If applicable, restitution amount ordered pursuant to plea agreement..... $

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $_____

____The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g),

____The court determined that the defendant does not have the ability to pay interest and it is ordered that:

____The interest requirement is waived.

____The interest requirement is modified as follows:

RESTITUTION

____The determination of restitution is deferred in a case brought under Chapters 109A, 110, 110A and 113A of Title

18 for offenses committed on or after 09/13/1994, until____. An Amended Judgment in a Criminal Case will be entered after such determination.

___The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Name of Payee: _____

****Total Amount of Loss**:_____

Amount of Restitution Ordered:_____

Priority Order or Percentage of Payment:_____

Totals: $_____

**Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994.

AO 245B (Rev. 3/95) Sheet 5, Part B - Criminal Monetary Penalties

Judgment - Page 5 of 6

DEFENDANT: **LLOYD LENWOOD WALKER**

CASE NUMBER: **6:95CR70084-001**

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A X in full immediately; or

B __ $_____ immediately, balance due (in accordance with C, D, or E); or

C __ not later than ____; or

D __ in installments to commence ___day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E __in *(e.g. equal, weekly, rnonthly, quarterly)* installments of $____ over a period of ____year(s) to commence ____day(s) after the date of this judgment.

The National Fine Center will credit the defendant for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

____The defendant shall pay the cost of prosecution.

____The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States Courts National Fine Center, Administrative Office of the United States Courts, Washington, DC 20544, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. If the National Fine Center is not operating in this district, all criminal monetary penalty payments are to be made as _____

AO245B (Rev. 3/95) Sheet 6 - Statement of Reasons

Judgment-Page 6 of 6

DEFENDANT: **LLOYD LENWOOD WALKER**

CASE NUMBER: **6:95CR70084-001**

STATEMENT OF REASONS

___The court adopts the factual findings and guideline application in the presentence report.

OR

X The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

See Additional Factual Findings and Guideline Application Exceptions - Sheet 6.01.

Guideline Range Determined by the Court:

Total Offense Level: **34**

Criminal History Category: **I**

Imprisonment Range: **151** to **188** months

Supervised Release Range: ___ to **5** years

Guideline Range: **$17,500** to **$4,000,000.00**

X Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $____

___Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

___For offenses that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

____Partial restitution is ordered for the following reason(s):

___The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

X The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

Due to the amount of drugs involved.

OR

____The sentence departs from the guideline range:

____upon motion of the government, as a result of defendant's substantial assistance.

____for the following specific reason(s):

AO 245B (Rev.3/95) Sheet 6 - Statement of Reasons

DEFENDANT: **LLOYD LENWOOD WALKER**

CASE NUMBER: **6:95CR70084-001**

ADDITIONAL FACTUAL FINDINGS AND GUIDELINE APPLICATION EXCEPTIONS

Court decreases offense level by two points for acceptance of responsibility; Court allowed two points for possession of a firearm in relation to drug trafficking.

Judgment-Sheet 6.01